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OFFICE OF PETITIONS

In re Application of :
Renger et al. :
Application No. 10/771,648 :
Filed: February 4, 2004 : ON PETITION
Attorney Docket No. HENK- :
0129/H-5328 :

This is in response to the petition filed on June 12, 2006, entitled "Petition Under 37 CFR 1.182 To Withdraw Petition For Revival Pursuant To 37 CFR § 1.137(b) Filed March 10, 2006."

On September 2, 2005, the Office mailed a final Office action, which set a three-month shortened statutory period to respond. In the absence of a reply, the application became abandoned on December 3, 2005. On March 10, 2006, petitioners submitted a petition under 37 CFR 1.137(b) (and fee), an RCE (and fee), and an amendment. On June 12, 2006, petitioners filed the present petition, accompanied by the requisite petition fee.

Petitioners wish to withdraw the petition under 37 CFR 1.137(b), filed on March 10, 2006, to allow the application to remain abandoned. Additionally, petitioners request that the Office refund the \$1,500.00 petition fee and the \$790.00 RCE fee.

As no decision on the merits of the petition under 37 CFR 1.137(b) has been reached, petitioner may withdraw the petition. Accordingly, the petition under 37 CFR 1.137(b) is **dismissed** as moot, and the application will remain abandoned.

In view of the abandonment status of the application, the RCE filed on March 10, 2006, is considered improper. Therefore, petitioners are entitled to a refund of the \$790.00 RCE fee.

As to the request for a refund of the \$1,500.00 fee for filing the petition under 37 CFR 1.137(b) on March 10, 2006, the Office notes:

[T]he phrase '[o]n filing' in 35 U.S.C. 41(a)(7) means that the petition fee is required for the filing (and not merely the grant) of a petition under 37 CFR 1.137. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6 (1982), reprinted in 1982 U.S.C.C.A.N. 770 ('[t]he fees set forth in this section are due on filing the petition'). Therefore, the Office: (A) will not refund the petition fee required by 37 CFR 1.17(l) or 1.17(m), regardless of whether the petition under 37 CFR 1.137 is dismissed or denied; and (B) will not reach the merits of any petition under 37 CFR 1.137 lacking the requisite petition fee.

MPEP 711.03(c)(III)(B).

Accordingly, the Office lacks the discretion to refund the \$1,500.00 fee as it is required by statute on filing the petition regardless of the disposition of the petition.

In summary, the petition under 37 CFR 1.182 is **granted** only to the extent that the petition under 37 CFR 1.137(b) is withdrawn and petitioners will receive a refund of the \$790.00 RCE fee. The Office further notes that petitioners' action is considered an **intentional act** to abandon the application.

The \$790.00 RCE fee will be refunded to the Deposit Account.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.

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